

Message Text

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73/63

ACTION SS-30

INFO OCT-01 ISO-00 /031 W

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P 232315Z NOV 73

FM AMEMBASSY SAN JOSE

TO SECSTATE WASHDC PRIORITY 5585

C O N F I D E N T I A L SECTION 1 OF 2 SAN JOSE 4114

EXDIS

C O R R E C T E D C O P Y - MRN: 4114 VICE 4144

E.O. 11652: GDS

TAGS: PGOV, CS

SUBJECT: EXTRADITION: ROBERT L. VESCO

REF: SAN JOSE 4044 (NOTAL)

1. CASTILLO HAS NOW GIVEN US HIS ANALYSIS OF THE VESCO DCCUMENTS. HE BELIEVES WE HAVE BASICALLY A GOOD CASE THIS TIME, BUT HE IDENTIFIED THE FOLLOWING KEY GAPS WHICH HE BELIEVES MUST BE FILLED BEFORE WE COULD INITIATE PROCEEDINGS HERE:

A. THE AFFIDAVITS SENT TO USE WILL NOT SERVE ("THEY FAIL COMPLETELY") IN PRESENT FORM TO MEET THE REQUIREMENT OF ARTICLE XI OF TREATY FOR THE EVIDENCE ON WHICH THE INDICTMENT WAS BASED. THIS IS SUBSTANTIALLY THE SAME POINT MADE IN PARA 2 REFTL. PROBLEM IS THAT THES AFFIDAVITS WERE DRAWN SUBSEQUENT TO THE INDICTMENT AND FOR THE SPECIFIC PURPOSE OF EXTRADITION REQUEST RATHER THAN FOR SECURING ORIGINAL INDICTMENT AND ARREST ORDER. CASTILLO BELIEVES CERTIFIED COPY OF KEY PORTIONS OF TRANSCRIPT OF ORIGINAL TESTIMONY BEOFRE THE GRAND JURY SHOULD BE SUBMITTED, BUT IF THIS IS NOT CONFIDENTIAL

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FEASIBLE THEN COPIES OF SWORN STATEMENTS BEFORE THE PROSECUTOR WHICH LED TO WARRANT OF ARREST WOULD PROBABLY BE SATISFACTORY. IN ANY CASE, IT IS CLEAR THAT THE AFFIDAVITS

ALREADY PROVIDED TO US WOULD NOT BY THEMSELVES SATISFY THE REQUIREMENTS OF OUR TREATY HERE, AND WOULD VERY PROBABLY RESULT IN OUR CEPE BEING SUSPENDED OR THROWN OUT BY THE COURT.

B. WE WOULD NEED CERTIFICATIONS BY COMPETENT AUTHORITY WHICH EXPRESSLY STATE THAT EACH KEY ELEMENT OF OUR EVIDENCE IS IN FACT AN INTEGRAL PART OF THE CASE AGAINST VESCO. WE ALREADY HAVE THIS FOR THE AFFIDAVITS. WHAT CASTILLO NOW NEEDS IS SEPARATE CERTIFICATION OF AUTHENTICITY OF THE TELEGRAMS AND EXTRACTS FROM THE BOOKS OF ICC AND THAT THEY WERE PART OF THE CASE PRESENTED TO GRAND JURY. AS THEY PRESENTLY STAND AS APPENDICES TO AN AFFIDAVIT, THEY ARE NOT ACCEPTABLE EVIDENCE. WE WOULD NEED THE SAME FOR THE ADDITIONAL EVIDENCE CALLED FOR IN (A) ABOVE.

C. CASTILLO SAYS THAT 18 USC 1343 IS NOT SUFFICIENTLY EXPLICIT WITH RESPECT TO THE DEFINITION OF THE ELEMENTS OF "FRAUD" TO MEET THE NEEDS OF THE COURT HERE WHICH WOULD HAVE TO DETERMINE THE CORRESPONDING CRIMES IN COSTA RICAN LAW (THIS IS THE QUESTION OF "IDENTIDAD DE NORMA" WHICH AROSE IN OUR EARLIER CASE AGAINST VESCO HERE AND WHICH I GATHER FROM NASSAU 1757 HAS ARISEN IN NASSAU ALSO) AND THE APPLICABLE SECTIONS OF ARTICLE II OF THE TREATY. MOREOVER, CASTILLO BELIEVES THAT THE FACTS IN THIS CASE MIGHT SUPPORT CRIMINAL CHARGES IN COSTA RICA ON SEVERAL GROUNDS OTHER THAN FRAUD (INCLUDING THEFT AND IMPROPER APPROPRIATION OF FUNDS) AND THEREFORE BROADEN OUR OPTIONS UNDER THE EXTRADITION TREATY. SPECIFICALLY SECTIONS 14, 16, 17 AND 19 OF ARTICLE II OF THE TREATY MIGHT ALL APPLY. FOR HIS OWN BACKGROUND AND FOR POSSIBLE USE
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IN ARGUMENT SHOULD WE PROCEED WITH THIS CASE, CASTILLO THEREFORE REQUESTS:

(1) TEXTS OF ANY OTHER PROVISIONS OF FEDERAL LAW AND/OR FEDERAL COURT DECISIONS WHICH DESCRIBE THE CRIMES OF FRAUD, THEFT AND MISAPPROPRIATION OF FUNDS.

(2) TEXTS OF RELEVANT PROVISIONS OF CALIFORNIA AND NEW YORK STATE LAW WHICH DESCRIBE THE CRIME OF FRAUD, THEFT AND MISAPPROPRIATION OF FUNDS. SUCH TEXTS SHOULD INCLUDE OR BE ACCOMPANIED BY THE RELEVANT LAW ON PENALTIES, STATUTE OF LIMITATIONS, AND COMPLICITY (I.E., PENALTIES FOR AN ACCOMPLICE AS WELL AS FOR A

PRIMARY ACTOR).

LET ME EMPHASIZE THAT CASTILLO HAS NO THOUGHT OF PRESENTING THESE OTHER TEXTS TO THE COURT AS PART OF OUR INITIAL REQUEST FOR EXTRADITION. HE UNDERSTANDS PERFECTLY THAT 18 USC 1843 AND 2 ARE THE ONLY FORMAL BASES FOR OUR REQUEST AND THAT VESCO HAS NOT BEEN CHARGED UNDER ANY OTHER LAW. HE NEEDS THESE TEXTS TO GIVE HIM GREATER DEPTH AND BACKGROUND ON THE CHARACTERISTICS OF "FRAUD" AND RELATED CRIMES IN US JURISPRUDENCE IN ORDER TO BE ABLE TO COMPARE THEM WITH COSTA RICAN LAW AND TO BE READY FOR CONTINGENCIES WHICH MAY WELL ARISE IN THE ARGUMENTATION OF THE CASE HERE.

2. IN ADDITION TO ABOVE MATERIALS WHICH CASTILLO CONSIDERS ESSENTIAL WERE WE TO PROCEED WITH EXTRADITION ATTEMPT HERE, HE RECOMMENDS WE OBTAIN THE FOLLOWING:

A. COPIES (IN SPANISH) OF ALL APPLICABLE INTERPOL AGREEMENTS IN FORCE BETWEEN COSTA RICA AND THE US, ESPECIALLY THOSE PROVISIONS COVERING PREVENTIVE DETENTION.

VAKY

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ACTION SS-30

INFO OCT-01 ISO-00 /031 W

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C O N F I D E N T I A L SECTION 2 OF 2 SAN JOSE 4114

EXDIS

B. ANY PROVIDIONS OF US LAW, JURISPRUDENCE OR PUBLICISTS DEALING WITH POLITICAL OFFENSES. CASTILLO NOTED THAT THE EXTRAD UION TREATY EXCLUDES EXTRADITION FOR SUCH OFFENSES, AND THAT VESCO'S ATTORNEYS WOULD SURELY ARGUE THIS POINT.

C. EVIDENCE THAT VESCO WAS A US CITIZEN WHEN THE OFFENSES TOOK PLACE, AND THAT HE HAS NOT YET LEGALLY RENOUNCED THAT CITIZENSHIP.

D. EVIDENCE THAT VESCO IS IN FACT IN COSTA RICA OR HAS SOUGHT "ASYLUM" HERE WITHIN

THE MEANING OF ARTICLE I OF THE TREATY, I.E.,
THAT HE IS A RESIDENT HERE. WE WILL NEED TO
DEVELOP THIS EVIDENCE HERE, BASED PRIMARILY
ON HIS COSTA RICAN PASSPORT, HIS RETIREE STATUS,
HIS PUBLIC STATEMENTS, ETC.

3. I URGE THAT STEPS BE TAKEN PROMPTLY
TO SUPPLY THE ITEMS REQUESTED ABOVE EXCEPT
2 (D) AS SOON AS POSSIBLE SO WE WOULD BE
READY TO GO IF NECESSARY.

4. IN ADDITION, I REQUEST THAT THE TEXT
(OR AT LEAST A FULL SUMMARY) OF THE SECOND
BUHL AFFIDAVIT OF NOVEMBER 12, 1973
(NASSAU 1753) BE FURNISHED TO SAN JOSE
URGENTLY. BOTH CASTILLO AND I BELIEVE
IT ESSENTIAL TO CONSIDER THIS DOCUMENT'S
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IMPACT ON THE PROSPECTS FOR OUR CASE HERE
BEFORE MAKING ANY FINAL JUDGMENT. THE SAME
CAVEAT WOULD APPLY TO ANY OTHER RELEVANT
EVIDENCE NOT ALREADY PROVIDED TO US.
VAKY

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